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ABSTRACT

This three-part curriculum for entrepreneurship education is primarily for postsecondary level, including four-year colleges and adult education, but it can be adapted for special groups or vocational teacher education. The emphasis of the seven instructional units in Part II is establishing a business. Unit C focuses on legal issues that affect the small business owner. It presents the basic concepts and vocabulary that should be understood for successful small business operation. Among the topics covered are contracts and agreements, including sales contracts, leases, and mortgages. The unit also discusses business insurance coverage and liabilities. Material is organized into three levels of learning which progress from simple to complex concepts: Exposure, Exploration, and Preparation/Adaptation. Each level contains preassessment; teaching/learning objectives; substantive information (questions in margins guide the students' reading); activities, including a postassessment; and a self-evaluation. Definitions of important terms are found at the beginning of the unit; a bibliography and listing of sources for further information are appended. The four-page instructor's guide contains the teaching/learning objectives, teaching/learning delivery suggestions, and pre/postassessment suggested responses. (YLB)

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Research and Development Series No. 194 B-3

P A C E

A PROGRAM FOR ACQUIRING COMPETENCE IN ENTREPRENEURSHIP

PART II: Becoming An Entrepreneur
UNIT C: Legal Issues and Small Business

The National Center for Research in Vocational Education
The Ohio State University
Columbus, Ohio 43210

1980

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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PART II: BECOMING AN ENTREPRENEUR

UNIT C: LEGAL ISSUES AND SMALL BUSINESS

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FOREWORD

Traditionally vocational education has been geared primarily to preparing students for employment--to preparing employees. Yet there is another career path available; students can learn how to set up and manage their own businesses. They can become entrepreneurs.

Vocational education, by its very nature, is well suited to developing entrepreneurs. It is important that entrepreneurship education be developed and incorporated as a distinct but integral part of all vocational education program areas. A Program for Acquiring Competence in Entrepreneurship (PACE) represents a way to initiate further action in this direction.

The strength behind these instructional units is the interest and involvement of vocational educators and successful entrepreneurs in the state of Ohio and across the nation. Special recognition is extended to the project staff: Lorraine T. Furtado, Project Director and Lee Kopp, Program Associate. Appreciation is also expressed to the many who reviewed and revised the drafts of the units: Ferman Moody, Hannah Eisner, and Sandra Gurvis. We owe a special thanks to those consultants who contributed to the content of this publication: Carol Lee Bodeen, Louis G. Gross, Douglass Guikema, Peter G. Haines, Philip S. Manthey, Charles S. McDowell, Mary E. McKnight, Steven R. Miller, Barbara S. Riley, Barbara A. Rupp, Ruth Ann Snyder, Robert L. Suttle, Florence M. Wellman and Roy H. Young.

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The National Center for
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HOW TO USE PACE

A Program for Acquiring Competence in Entrepreneurship (PACE) is a curriculum responsive to the need for instruction in entrepreneurship. It is primarily for postsecondary level, including four year colleges and adult education, but it can also be adapted for special groups. PACE is divided into three parts (1) Getting Ready to Become an Entrepreneur, (2) Becoming an Entrepreneur (establishing a business), and (3) Being an Entrepreneur (operating a business).

Each of the three parts has a set of instructional units which relate to that topic. Within these units, the material is organized into three levels of learning: Exposure, Exploration, and Preparation/Adaptation. These levels of learning progress from simple to complex concepts.

The levels of learning will enable you to use the PACE materials to suit your individual needs. You may find it best to work with the exposure level of one unit and the exploration level of another. Or, you may choose to pursue one level throughout the entire series. You might also want to work through two or more levels in one unit before going on to the next unit.

Before beginning a unit, discuss with your instructor what level or levels of learning in that unit are most appropriate to your goals and abilities. Read the unit overview and look through the pre/post-assessments for the three levels to help you in your choice. Also check the list of definitions you might need to look up or research for that level.

When you are ready to start, turn to the level you have chosen, take the preassessment and identify those items which you feel need special attention in the unit. Also look at the learning objectives; they will tell you what you should be able to do by the time you finish that level of learning.

As you read, you will notice questions in the margins alongside the substantive content portion of each level. Use these questions to guide your reading.

At the end of each level of learning are activities which help you become involved with the content presented in the unit. You and your instructor can decide on how many activities you should do; you may want to do several or you many need to do all.

Then, evaluate yourself. Is there any material that you need to review before you take the postassessment? The difference in your answers on the pre/postassessments should show you how much you have grown in your knowledge of entrepreneurship.

When you and your instructor feel that you have successfully completed that level, you are ready to begin another level of learning, either in the same unit or in another.

OVERVIEW OF THE UNIT

This unit discusses several legal issues that affect the small business owner. It presents the basic concepts and vocabulary that should be understood for successful small business operations.

Among the topics covered are contracts and agreements, including sales contracts, leases, and mortgages. The unit also discusses business insurance coverage and liabilities.

This overview of legal issues will not make you a legal expert. It will, however, acquaint you with the basic terms and ideas you need to know. It will give you a "feel" for what your legal obligations are and for when you should seek advice and where to get it.

DEFINITIONS TO KNOW BEFORE YOU BEGIN

As you read through a level, you might find some unfamiliar words. Listed below are several business terms used in each level. Knowing these before you begin might help you to better understand that level.

EXPOSURE

default

accounts receivable

breach of contract

free enterprise system

surety bond

negligence

EXPLORATION

expressed lease

implied lease

written contract

oral contract

tenancy

security deposit

business interruption

implied contracts

title

fidelity

negligence

PREPARATION/ADAPTATION

subleasing

subletting

assignment

collateral

breach of contract

deed of trust

mortgage

credit sales contract

long-term sales contract

The following legal problems are listed in the preparation/adaptation level. You might want to look up some of these terms, should they refer to an anticipated problem area.

Acquisitions
Advertising - copy packaging
Agents and brokers
Antitrust matters
Arbitration - role in disputes
Bankruptcy
Board of Directors
Brand names
Buying and selling - terms and conditions
Checks - forgeries, frauds
Contracts and agreements
Competitors stealing employees
Corporate form
Employer and employee responsibilities
Employment agreements
Franchises
Government - federal, state, and local
Insurance contracts
Interstate transportation
Inventions
Labeling
Licenses
Mergers
Misrepresentation
Multiple corporations
Negligence
Negotiable instruments
Order acknowledgment and confirmation
Patents
Permits
Price discrimination
Product liability
Profit sharing
Records, legal
Retirement pensions
Slander and libel
Stock options
Stock voting rights
Stockholders
Taxes
Tie-in sales
Trade secrets
Trademarks
Unfair competition
Verbal agreements
Wills
Worker's compensation
Zoning

(SBA, 1968, p. 165)

PACE

PATH OF STUDY

PART I-- GETTING READY TO BECOME AN ENTREPRENEUR

Unit I A

Unit I B

Unit I C

PART II-- BECOMING AN ENTREPRENEUR

Unit II A

Unit II B

Unit II C -- Legal Issues and Small Business

Unit II D

Unit II E

Unit II F

Unit II G

PART III -- BEING AN ENTREPRENEUR

Unit III A

Unit III B

Unit III C

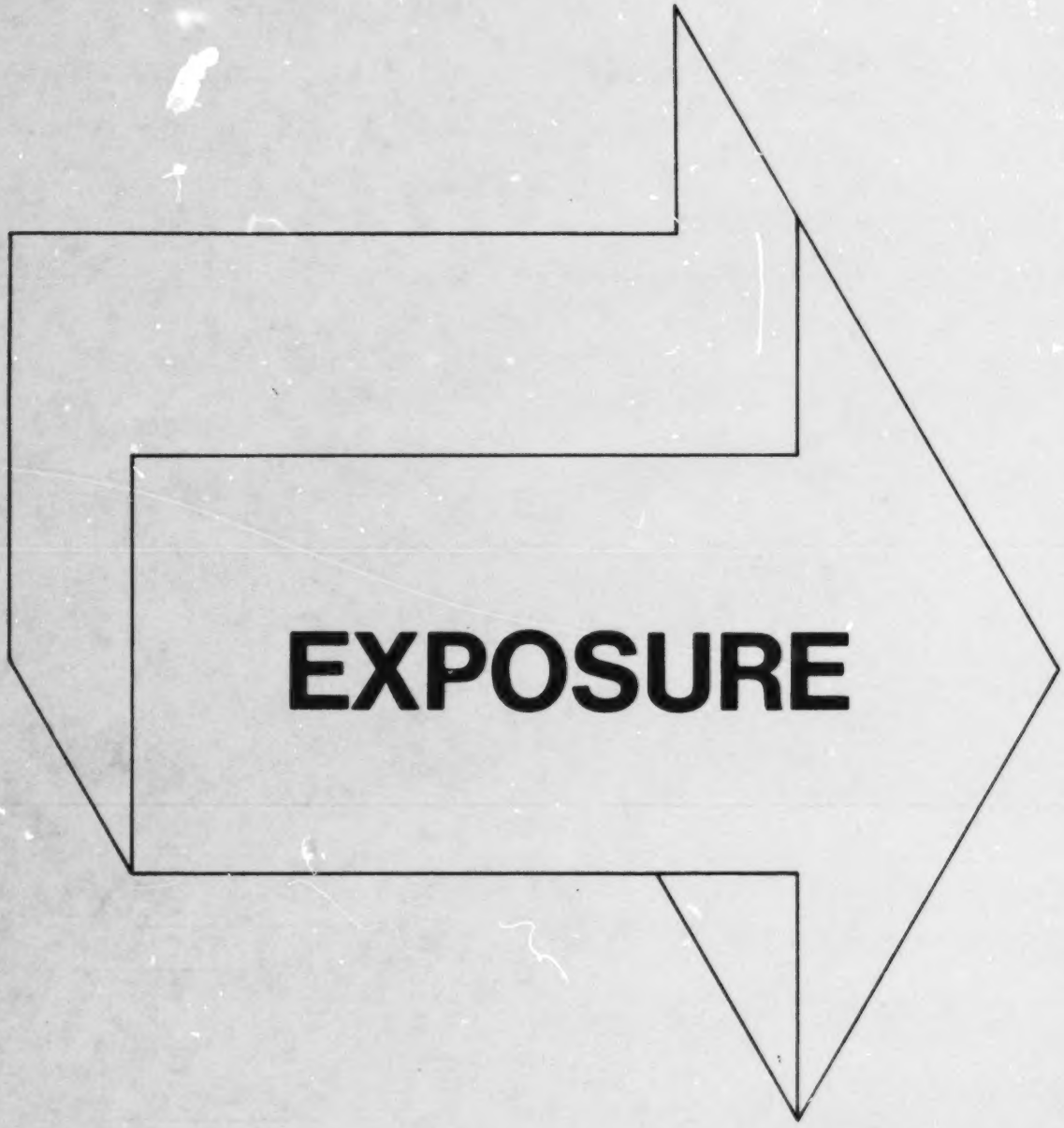
Unit III D

Unit III E

Unit III F

Unit III G

Unit III H


EXPOSURE

EXPOSURE

PART II, UNIT C
LEGAL ISSUES AND
SMALL BUSINESS

PREASSESSMENT

Here are some questions that test for knowledge of the contents of this level. If you are very familiar with the information needed to answer them, perhaps you should go to another level or unit -- check with your instructor. Otherwise, jot down your answers. After you've read through this level, take the poastassessment at the end of the "Exposure Activities" section and measure what you've learned.

1. What is the difference between expressed contracts and implied contracts?
2. What requirements make a contract enforceable by law?
3. As an entrepreneur, what types of insurance might you consider or require?
4. What is the meaning of the following? When might these terms be used?

    A. Unilateral Contract
    B. Implied Contract
    C. Expressed Contract
    D. Bilateral Contract
    E. Formal Contract

5. Define the following:

    A. Insurance
    B. Insuree
    C. Premium
    D. Policy

TEACHING/LEARNING OBJECTIVES

Upon completion of this level of instruction you should be able to:

1. Distinguish between expressed and implied contracts.
2. Name the basic requirements that must be satisfied to make a contract enforceable by law.
3. Explain the need for insurance and describe the kinds of insurance a small business owner should consider.
4. Define the terms "premium" and "policy."
5. Explain why credit sales constitute a type of contract.

SUBSTANTIVE INFORMATION

IMPORTANCE OF LEGAL ISSUES

WHY ARE LEGAL ISSUES IMPORTANT?

As a small business owner, you will find that it is important that you understand the legal nature of things that you may have taken for granted before. Did you know that selling a service or product is considered a contract? That you may be held responsible if a customer or employee is injured in your place of business?

Although the legal issues surround a small business are numerous and complicated, it is vital that you, as an entrepreneur, have some knowledge of the various ways in which you are affected. You may still have to consult a lawyer, but you will know when help is necessary. You will also be better able to know what your legal obligations are and to guarantee that you will be able to fulfill them.

Among the most basic legal issues that affect the small business owner are the contracts that are made in daily transactions and the insurance needed to protect the owner from prosecution or loss.

CONTRACTS AND AGREEMENTS

WHAT ARE CONTRACTS?

A contract is "any agreement enforceable by law." It is one of the most important legal actions entered into by any entrepreneur. A contract does not have to be written to be legal; depending upon the type of contract involved, you may

be legally bound by your word.

It is important to differentiate between social agreements and contracts. Social agreements (engagements) are not enforceable by law. Examples of social agreements include one person agreeing to go to a dance with another, promising to call another at a given time on a given day, or agreeing to meet a teacher after school. The law cannot compel a person to live up to these types of agreements.

Kinds of Contracts

WHAT KIND OF CONTRACTS ARE THERE?

A variety of contracts exist in today's society, and include the following:

1. *Expressed contracts:* An expressed contract is verbal, and is either written or oral. An oral contract depnds on the honesty and memory of each of the parties involved. For example, Mr. Jones agrees to paint a house for Mr. Smith, and Mr. Smith agrees orally to pay a certain fee to Mr. Jones for painting his house. The two men have entered into a legal contract.

   Many times, expressed contracts should be written down. Since orally expressed contracts depend upon the memories of the parties involved, confusions could occur and problems develop. However if the contract is written and problems arise, both parties

have written contract to rely on to prove their point or to protect themselves.

2. *Implied Contracts:* This type of contract involves actions or words by an interested party which imply intention to enter into a contract. For example, if a person hails a cab, gets in, and gives the driver an address, the person is implying that he or she will pay the cab driver upon arrival at the destination.
3. *Formal Contracts:* A formal contract is written and under seal. Any contract not under seal cannot be labeled a formal contract.
4. *Unilateral Contracts:* A unilateral contract is a promise on one person's part and an action on another person's part. For example, you are asked by your neighbor to clean out his or her garage and are to receive five dollars in payment. Without a reply on your part, you clean the garage.
5. *Bilateral Contracts:* A bilateral contract is a promise for a promise. To continue the above example, add your promise to clean your neighbor's garage. A promise was offered (neighbor promised you five dollars to clean the garage) and your promise was given in return (you agree to clean the garage at a given time).

Basic Contract Requirements

WHAT ARE THE BASIC CONTRACT REQUIREMENTS?

Contracts that are enforceable by law must meet five general requirements (1) there must be an offer and an acceptance; (2) real consent must be given; (3) all parties must be competent (age and mentality); (4) all considerations must be valid (you cannot get something for nothing); and (5) a legal purpose must be involved and cannot be contrary to public interest.

The offer must satisfy certain criteria before it becomes enforceable. To begin, an offer must be:

1. Definite and certain--it should set all the terms for a contract or agreement.
2. Communicated to the person to whom the offer is being made orally or in written form.
3. Made with the intention of entering into an enforceable obligation (not in anger or role-playing).

An acceptance must also fulfill certain criteria if an offer is to be enforceable. The acceptance must be:

1. Unconditional--person to whom the offer is being made cannot attach conditions to the original offer.
2. Time-oriented--person accepting the offer must abide by a time line.
3. Completed by an act--person to whom the offer is made must indicate that the offer is being accepted.

An offer can be terminated in many ways, and can be:

1. Overextended --For example, Mr. Jones offers to sell an article to Mr. Smith for $100.00 and states that the offer is good until 9:00 a.m. on September 30. If, by 10:00 a.m. on September 30, Mr. Smith has not bought the article, the offer is terminated because Mr. Smith did not buy it within the time line established.
2. Withdrawn--If no down payment has been made by Smith to Jones prior to 9:00 a.m. on September 30, Jones can withdraw his offer anytime before 9:00 a.m. on September 30.
3. Rejected--Smith says he does not want the article at the time of offer.
4. Counteroffer--Smith says he will buy the same article for $90.00 after Jones has offered it to him for $100.00
5. Dissolved by operation of the law--Either Smith or Jones dies or is insane, making an agreement impossible.

There are federal regulations and requirements pertaining to contracts. The Uniform Commercial Code (UCC) pertains to commercial or business transactions involving personal property and contracts. For example, the UCC stipulates that legal actions on contracts in which parties have failed to deliver or pay

for goods must be commenced within four years from the date of the breach of contract.

The UCC is a good guide, but when you have a specific question or problem, it is best to seek assistance from one of your state government agencies. For example, requirements for terminating a contract can vary from state to state. Chart I, "Years Within Which Legal Action on Contracts Must Be Commenced After Default," on the next page, provides information on how regulations change from one state to another, and illustrates that many states have different time limits within which legal action can be commenced for oral and written contracts. Check the laws in your state to make sure you know what your state statutes say on any given contractual matter; county and municipal offices should have this information, or can direct you to the right source. An attorney is also a good source for checking out state rules and regulations to make sure they do not deviate from the basic UCC.

Credit Sales Contracts

IS A CREDIT SALE A CONTRACT?

Credit sales constitute a type of contract involving rights and duties on the part of the contracting parties. Whenever you purchase or sell goods or services on credit you are entering a contract--a credit sales contract. In a credit sales contract, the seller agrees to exchange certain goods or services for a consideration known as "the price to be paid at a later date.

CHART I

YEARS WITHIN WHICH LEGAL ACTIONS ON CONTRACTS MUST BE COMMENCED AFTER DEFAULT

State	Open Book Accounts Receivable	Oral Contracts	Written Contracts	State	Open Book Accounts Receivable	Oral Contracts	Written Contracts
Alabama	3	6	6	Missouri	5	10	10
Alaska	6	6	6	Montana	5	5	8
Arizona	3	3	6	Nebraska	4	4	5
Arkansas	3	3	5	Nevada	4	4	6
California	4	2	4	New Hampshire	6	6	6
Colorado	6	6	6	New Jersey	6	6	6
Connecticut	6	3	6	New Mexico	4	4	6
Delaware	3	3	3	New York	6	6	6
District of Columbia	3	3	3	North Carolina	3	3	3
Florida	4	3	5	North Dakota	6	6	6
Georgia	4	4	6	Ohio	6	6	15
Hawaii	6	6	6	Oklahoma	3	3	5
Idaho	4	4	5	Oregon	6	6	6
Illinois	5	5	10	Pennsylvania	6	6	6
Indiana	6	6	10-20	Rhode Island	6	6	6
Iowa	5	5	10	South Carolina	6	6	6
Kansas	3	3	5	South Dakota	6	6	6
Kentucky	5	5	15	Tennessee	6	6	6
Louisiana	3	10	10	Texas	2	2	4
Maine	6	6	6	Utah	4	4	6
Maryland	3	3	3	Vermont	6	6	6
Massachusetts	6	6	6	Virginia	3	3	5
Michigan	6	6	6	Washington	3	3	6
Minnesota	6	6	6	West Virginia	5	5	10
Mississippi	3	3	6	Wisconsin	6	6	6
				Wyoming	8	8	10

(Applied Business Law. 1977, p. 219).

As a contract, the credit sales agreement must satisfy the five basic requirements of a contract mentioned earlier. There are two types of credit: trade credit, which is credit extended from one business firm to another; and consumer credit, which is credit given by retailers to their customers. The customers are the ultimate consumers.

Economically speaking, our free enterprise system depends on mass production, mass distribution, and mass credit. Credit is big business, with most of the business world operating on a credit basis. Without credit from banks and savings and loan associations, many manufacturers could not operate; without credit from manufacturers and financial institutions, most wholesalers and retailers could not operate; and without credit, the average American family could not make such major purchases as a home or car. The consumer installment debt in the United States is about $200 billion.

BUSINESS INSURANCE

WHO NEEDS INSURANCE?

Getting out of bed, driving a car, walking to a friend's home, eating in a restaurant, and opening a business all involve an element of risk. Risk is simply an uncertainty or possibility of loss. Like individuals, businesses need insurance to cover risk.

To Insure or Not to Insure

SHOULD A BUSINESS BUY INSURANCE?

Insurance is a protection plan that helps reduce financial risk. By buying insurance, a business joins with many other companies to create a pool of money to pay for losses. Thus, one business' loss is spread among a great number of firms. Hopefully, the business will never have a loss. However, should a loss occur, the business insurance would help to cover it. In addition to preventing loss, insurance helps to reduce worry, frees money for investment, and helps to gain credit (other businesses may not deal with an uninsured firm).

Some entrepreneurs however, choose not to purchase insurance. Below are a number of ways which you, as an entrepreneur, can deal with risk without buying insurance.

1. You can withstand losses yourself. Some entrepreneurs argue that insurance is too expensive and that "it is impossible to cover everything." Sometimes a business will gamble withstanding certain losses and will not have certain types of insurance.
2. You can opt for a loss-prevention program. Such programs educate employees on how to reduce losses. You, as the entrepreneur, will need to develop guidelines and rules of safety to be followed by all employees.

3. You can transfer risk to others, e.g., lease property and/or equipment in which the leasing agent carries the insurance.
4. You can adopt a policy of self-insurance which involves saving "X" amount of money at regular intervals over a period of time in a separate fund to protect against losses incurred.

Types and Terminology

WHAT ARE THE TYPES/ TERMINOLOGY APPLICABLE TO INSURANCE?

Before you investigate the various types of insurance, it is best to become familiar with insurance terminology, such as:

Insurance: A contract whereby, for a specified amount of money (premium), one party agrees to pay another (indemnity) for specified losses arising from a specified cause. One or more people pay into a pool from which money can be drawn when some type of loss is suffered.

Policy: A written contract of insurance. The maximum amount to be paid in case of loss is the face value, which is the amount specified on the policy. The person who pays in a case of loss is the insurer. The one who incurs the loss and receives the money is the insured.

Premium: A specified amount of money paid on a periodic basis for insurance.

Business owners must often select various types of insurance coverage. The types and amount of insurance coverage chosen

depend on several factors such as the type of business, willingness of the entrepreneur to assume risk, and where the business is located.

There are seven different types of insurance:

1. Life Insurance - pays a specified amount of money upon the death of a specified person. It often includes other benefits.
2. Marine Insurance - covers loss or damage to vessels, cargo, and other property exposed to the perils (risks) of the sea. It is perhaps the oldest type of insurance, dating back to ancient times.
3. Inland Marine Insurance - covers property against various risks (perils) the property can be exposed to while being transported on inland waterways (other than on the oceans).
4. Fidelity and Surety Bonding Insurance - provides coverage against financial loss caused by dishonesty, such as embezzlement, or the failure of one person to perform a legal obligation to another, such as constructing a building as promised.
5. Fire Insurance - standard fire insurance protects against losses caused by fire. Coverage may be extended to protect against certain other risks, such as smoke, windstorm, earthquake, rain, and hail.

6. Social Insurance - provided through government action. It includes unemployment insurance and old-age, survivors, disability, and health insurance.
7. Casualty Insurance - includes coverage for a variety of specific situations in which chance, accident, or negligence may result in loss. Some of the more important types of casualty insurance are listed below:
   a. Burglary, robbery, theft, and larceny insurance protects against losses that result from such acts, and under certain circumstances, against losses resulting from the mysterious disappearance of property (when it vanishes for unexplainable or unaccountable reasons).
   b. Automobile insurance covers losses arising from ownership and operation of motor vehicles.
   c. Public liability insurance provides protection against claims of third persons who suffer injury or loss as a result of negligence committed by the insured. Product liability insurance is a form of public liability insurance.
   d. Worker's compensation insurance is a casualty insurance that covers workers and their dependents in case of loss due to chance, accident, or negligence.

EXPOSURE ACTIVITIES

As you have just read, knowledge of legal issues is a very important part of being a business owner. Now that you have learned some skills related to dealing with legal issues, try these activities.

ASSESSMENT ONE

1. List the requirements that a valid offer and a valid acceptance must satisfy.
2. Describe a credit sales contract. Why do credit sales constitute a type of contract?

POSTASSESSMENT

1. Distinguish between expressed and implied contracts.
2. Name the basic requirements that must be satisfied to make a contract enforceable by law.
3. As an entrepreneur you will need various kinds of insurance. What are the various types of insurance you should consider? Why might each be necessary?
4. When and under what conditions would you want to make these types of contracts?

    A. Unilateral Contract
    B. Implied Contract
    C. Expressed Contract
    D. Bilateral Contract
    E. Formal Contract

5. Define the following terms:

   A. Insurance
   B. Insuree
   C. Premium
   D. Policy

Compare your answers to your responses to the preassessment. You may want to check your postassessment answers with your instructor.

SELF-EVALUATION

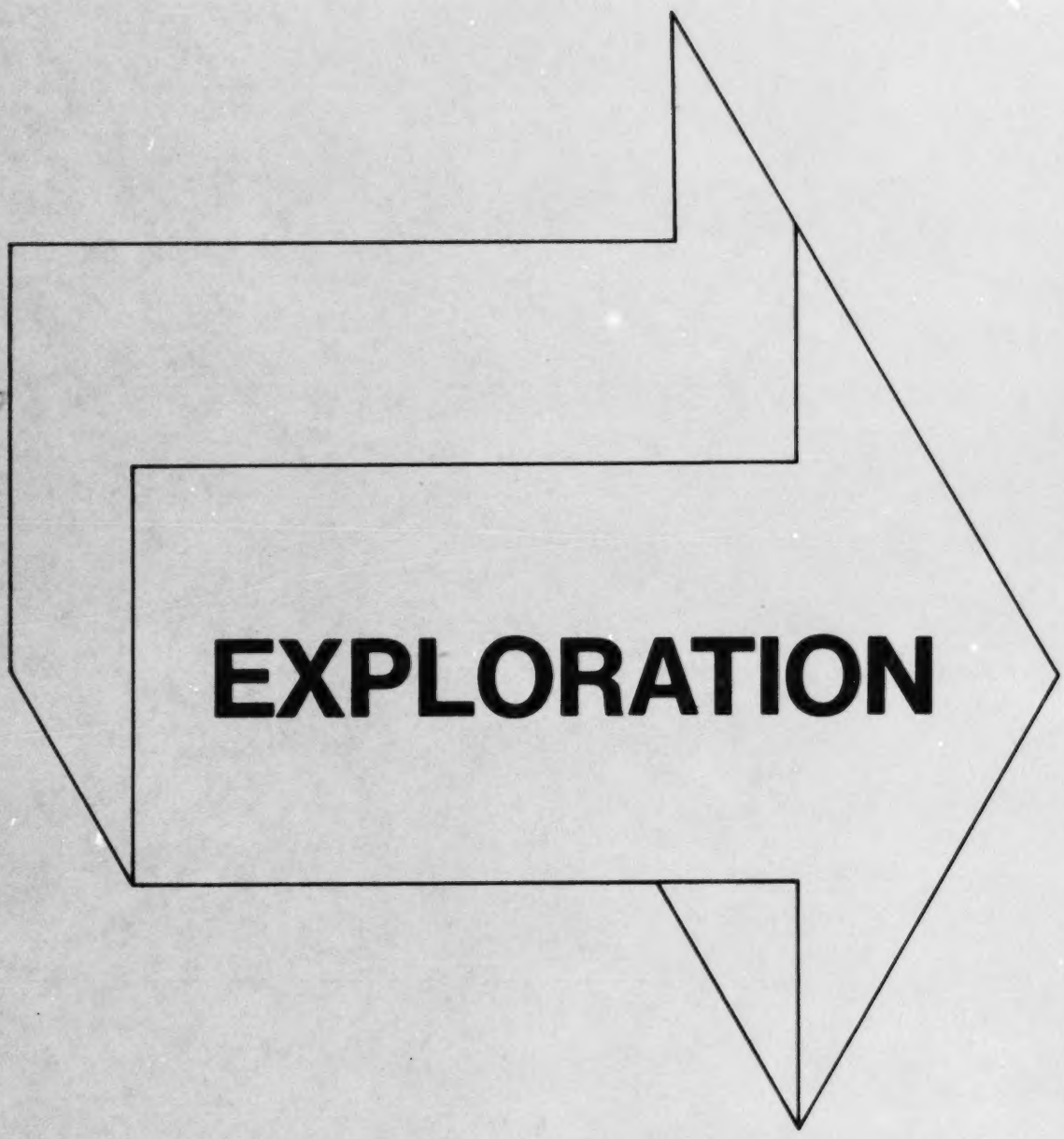
How well did you know the information needed to do the activities?

( ) Very well

( ) Fairly well

( ) A little

Be honest with yourself. If you feel you don't know the material well enough, it might be helpful to review this section before going on.


EXPLORATION

PREASSESSMENT

Here are some questions that test for knowledge of the contents of this level. If you are very familiar with the information needed to answer them, perhaps you should go to another level or unit -- check with your instructor. Otherwise, jot down your answers. After you've read through this level, take the postassessment at the end of the "Exploration Activities" section and measure what you've learned.

1. What is a lease? Are there various types of leases? What are they?
2. What is a mortgage and what are its characteristics?
3. What is the Uniform Commercial Code?
4. What is coinsurance? Is having it beneficial to the small business owner?
5. What are the various types of insurance?

TEACHING/LEARNING OBJECTIVES

Upon completion of this level you should be able to:

1. Name two types of leases.
2. Name the major rights and responsibilities of lessees and lessors.
3. Identify the common characteristics of mortgages.
4. Describe the Uniform Commercial Code.
5. Explain different types of insurance coverage available.
6. Describe coinsurance.

SUBSTANTIVE INFORMATION

LEASE CONTRACTS

WHAT ARE THE MOST COMMON TYPES OF CONTRACTS?

Almost daily, businesses are involved in establishing contracts. Contracts are governed by laws. Sales contracts and lease contracts are perhaps the two most common types of contracts.

The probability is high that you will, at least at the beginning, lease the site for your business rather than buy it. Therefore it is important to become acquainted with leases and their terms.

A lease is a special contract that establishes a relationship between a property owner and a tenant. It can be expressed or implied. A tenant (lessee) has possession of the real property of the property owner (lessor). Rent is the payment given by the tenant to the property owner. Many states have statutes regarding leases. In some states, if the leasing period is to be a year or longer, the contract must be written to be enforceable.

Types of Leases

WHAT TYPES OF LEASES ARE AVAILABLE?

There are various types of leases that a business can sign. Selecting the "right" lease depends on the circumstances, type of business, and common leasing practices within the industry. There are four types of leases:

1. Tenancy for years: site is leased for a definite period of time. Lease can last six months, one year, five years, or ninety-nine years.
2. Tenancy from month to month: site is leased month by month, and rent is paid by the month.
3. Periodic Tenancy: site is leased for an indefinite period of time with rent due at specified intervals.
4. Tenancy at will: site is leased for an indefinite period of time. Lease can be continued indefinitely, or can be terminated by either party.

Tenant and Property Owner Responsibilities

WHAT ARE THE RESPONSIBILITIES OF TENANTS AND PROPERTY OWNERS?

In a lease agreement, both tenant and property owner assume certain responsibilities and rights. Some cities, counties, and municipalities have established rules and regulations with which both parties must comply. Therefore, you should check with the local government office responsible for regulating lease agreements in your community to be sure you know the exact duties and the rights of tenants and property owners. Below is a general listing of the responsibilities of each party.

Duties of the Tenant

WHAT ARE THE DUTIES OF THE TENANTS?

Normally, the duties and rights of the tenant (lessee) include:

1. Payment of rent: the rent can be paid with money, services, or products as long as both parties agree. Sometimes a security deposit is required. This is usually refunded when the lease is terminated if the property is not damaged and is left in the same condition as it was when the lease was signed.
2. Use of the property: the lease usually specifies how the property is to be used. If the property is leased as farmland, it cannot be used for mining.
3. Repair and alterations: the tenant must maintain reasonable repairs unless the property owner has agreed to make them. The property must be maintained in the same condition as when the tenant moved in. The tenant must also take reasonable action to prevent damage. In other words, if the roof leaks, the tenant should inform the property owner of the leak before a major problem develops.
4. Liability and injury to a third party: the tenant is in exclusive control of the property. If ice forms on the steps or in the entrance to the property, the tenant, not the property owner, is responsible for removing the ice. If anyone falls due to the negligence of the tenant, it is the tenant who is responsible.

5. Assignment and subletting: if a tenant subleases the property to a third party, the third party is liable for rent and other conditions of the original lease. However, if the third party fails to pay the rent, the original tenant is liable and must pay. Many lease agreements do not have sublease provisions. Normally, if subleasing is allowed, the property owner must approve of the sublease.

Duties of the Property Owner

DO PROPERTY OWNERS HAVE RIGHTS AND RESPONSIBILITIES?

Property owners (lessors) also assume rights and responsibilities. Their rights and duties normally concern:

1. The right to collect the agreed rent. If the tenant does not pay the rent when due, the property owner has the right to sue and/or evict the tenant. Eviction means the legal right to force the tenant off the property. Eviction laws vary from city to city. You will need to check your local rules and regulations concerning eviction.
2. Inspection: the property owner does <u>not</u> have the right to enter the property at any time. However, the property owner can establish in the lease the right to enter the property to do whatever is necessary to protect it. The property owner can also show the property to prospective tenants at reasonable times. Again, be sure to check your

local laws regarding inspection of property by the property owner; some communities have very specific rules and regulations.

3. Condition of the premises: unless agreed upon, the property owner does not have to keep the premises repaired and is not liable for injuries to a third party caused by neglected conditions of the property. In some states, human habitation codes have been established. Such codes can provide for the following conditions:
   a. Protected (no exposed) wiring
   b. Sealed (no leaky) roof
   c. Easy-to-clean walls and ceiling that are free of loose plaster and wallpaper
   d. Screens on outside doors and windows
   e. Private bathrooms in each dwelling place.
4. Taxes: Unless otherwise stated, the property owner pays the property tax.
5. Fixtures: If the tenant installs fixtures, they become a part of the property and belong to the property owner. To avoid problems, both parties should reach an agreement before the tenant installs fixtures.

THE MORTGAGE AGREEMENT

WHAT IS A MORTGAGE?

In a mortgage agreement, a "mortgagor" temporarily or conditionally pledges his or her property to a "mortgagee" as security for a loan. The mortgagee collects loan repayments as well as interest for the duration of the mortgage agreement.

Although state laws vary, all mortgages usually have these characteristics:

1. If the debt is not paid on schedule, the mortgagee has the right to take recourse under the prevailing state laws. Usually the mortgagee can sell the property by court order to get his or her money back. In some states, property being sold by the mortgagee to regain losses must be sold at a public auction to the highest bidder.
2. The mortgagor has the right to regain the property by paying what is due in a limited time after default. In some states, even after the court has sold the property, the mortgagor can regain the property by paying the mortgage in full--usually within one year.
3. Once the money is paid in full and the mortgagee gets his or her money plus interest, the mortgagor owns the property free and clear.

SALES CONTRACTS

WHAT ARE SALES CONTRACTS?

The most common type of contract is a sales contract. A sale is the transfer of ownership or title of goods from the seller to the buyer for a consideration (price). The sales contract can be written, oral, or implied. For example, in an implied contract, if a buyer takes a product from the store shelf, the implication is that the buyer will pay for it.

A distinction must be made between a sales contract and a contract to sell. The Uniform Commercial Code (UCC) states: "Contract for sale includes both a present sale of goods and a contract to sell goods at a future time. A sale consists in passing the title from the seller to the buyer for a price." A contract to sell means that the title of goods is to pass at a later time.

Sales contracts are written using a distinct terminology. If you read a number of sales contracts you will encounter the same set of terms to describe the persons and places involved. A merchant is a person who regularly purchases and sells goods. The casual seller only sells occasionally. Goods are tangible, movable personal property. A conveyance is a transfer of a title of real property from a seller to buyer.

Sales cannot involve illegal acts; there are laws to prevent certain types of sales. For example, one must have a prescription to buy drugs; and to be able to sell certain products, one must be licensed. The pharmacist

selling prescription drugs is required to have a license to sell. There are also laws which prevent the sale of certain items on Sundays or holidays. Other laws require that certain goods be packaged and labeled in a specified manner.

The Uniform Commercial Code

WHAT IS THE UNIFORM COMMERCIAL CODE?

The Uniform Commercial Code (UCC) relates to commercial or business transactions regarding personal property and contracts. It is a good guide; it contains detailed rules of conduct for business persons. Since it covers appropriate methods of doing business, you need to become familiar with the code.

Each state modifies the UCC to fit its needs. The code is also interpreted by the courts. However, if you have a specific question or problem, it is best to seek assistance from a state government agency or attorney to be sure that the rules and regulations of your state do not deviate from the basic UCC.

INSURING THE BUSINESS

HOW IMPORTANT IS IT TO PROTECT YOUR FIRM AGAINST RISK?

Like many other business activities, entering into contracts involves risks. As an entrepreneur, you should always take steps to minimize risks and provide some type of insurance against those hazards you are likely to face. Otherwise, a lifetime of work and dreams can be lost in a few minutes.

Types of Insurance Coverage

WHAT TYPES OF COVERAGE ARE THERE?

Business owners must be selective about insurance. Various types of insurance are needed to protect not only property but employees as well. The most common types of insurance are life, auto, fire, and health. Additional types of insurance include accident and casualty or liability insurance, burglary insurance, business interruption insurance, commercial insurance, and fidelity insurance. Less familiar types of insurance include plate glass, earthquake, marine, steam boiler, and title insurance. Below is a discussion of various types of insurance:

Fire Insurance. Consider what a fire could do to a business. Not only could the building be lost, but the furniture, equipment, records, machinery, and stock could be ruined as well. Relocating, rebuilding, and restocking can take a great amount of time and money. Normally to get complete fire insurance protection for buildings, equipment, fixtures, etc. you must purchase more than one policy. Usually one policy does not cover building, furniture, equipment, records, machinery, and stock. If you are renting or leasing any of these items, be sure to find out just what is covered by fire insurance. Some fire insurance policies can be extended to cover other calamities such as hail, wind, riots, civil disorder, smoke damage, explosion, and aircraft or auto damage. Here too, you should assess your needs and determine the amount of risk you are willing to take.

Insurance Against Losses Related to Goods. There are several ways in which an entrepreneur can protect against losses while goods are in transit. Transportation and cargo insurance protect against losses sustained in getting the goods to and from the business. Losses can occur in the form of damaged goods, theft, or loss of total shipment. Marine insurance is used for goods shipped via water. United States Postal Insurance will insure packages for a fee. Common carrier trucking companies are compelled by regulations to carry cargo insurance.

Casualty Insurance protects a business from specific situations in which chance, accident, or negligence may result in loss. Businesses can purchase casualty insurance which provides protection from losses caused by burglary, robbery, theft, and larceny.

Public Liability Insurance is another type of casualty insurance. Public liability insurance involves warranties and product liability, and protects consumers against harmful goods, fraud, and negligence by the manufacturers or producers.

Coinsurance. If an entrepreneur does not insure adequately for possible losses, an insurance company may insert a coinsurance clause in the policy. Coinsurance means the company pays the insured amount, and the insuree must bear a portion of the cost should a loss occur.

Determining Adequate Coverage

HOW CAN YOU DETERMINE ADEQUATE COVERAGE?

A sound insurance protection plan is just as important to the success of your business as good financing, marketing, personnel management, or any other business function. And like the other functions, a good risk minimization management program is not developed by accident, but by organization and planning

On a regular basis (at least once every three years), you should have your business reappraised by your insurance agent to be sure insurance protection is adequate. As your company grows, its insurance protection needs updating.

Your insurance program should include certain elements. To make sure that you are adequately covered, you should take action in four distinct ways:

1. Recognize the various losses you can suffer.
2. Follow the guides for buying insurance economically.
3. Organize an insurance management program.
4. Get professional advice.

EXPLORATION ACTIVITIES

Do you feel knowledgeable enough about leases, mortgages, sales contracts, and insurance to be able to work with these legal techniques? The following activities will help you experience "real" situations and give you an opportunity to put into practice what you have learned. After completing the activities, do a self-evaluation to check your understanding of the material.

ASSESSMENT ONE

1. Contact five local businesses in your field of interest and interview the owner or manager of each. Ask about the firm's insurance coverage. Ask each owner or manager to answer the following questions:
   (1) What types of insurance do you carry?
   (2) How did you determine how much insurance to carry?
   (3) How did you select the types of insurance you carry?
   (4) How did you select insurance companies?
2. Take the information you discovered above and compare your findings. Did all the enterprises have about the same amount of coverage? Did they all carry the same types of insurance? You might want to chart your findings so comparisons are easier to draw. For example:

TYPES OF INSURANCE/AMOUNT OF COVERAGE

Firm	Fire	Life	Marine	Inland Marine	Fidelity	Social	Casualty Robbery
1. Sam's Lumber Yard	$15,000	$150,000	none	none	none	none	$10,000

POSTASSESSMENT

1. Define the term "lease" and identify the various types of leases that are used.
2. Define the term "mortgage" and describe three important characteristics of mortgages.
3. Describe the Uniform Commercial Code. Of what importance is it to entrepreneurs?
4. Define the term "coinsurance." Is having coinsurance desirable for a small business owner?
5. Identify and discuss four types of insurance.

Compare your answers to your responses to the preassessment. You may want to check your postassessment answers with your instructor.

SELF-EVALUATION

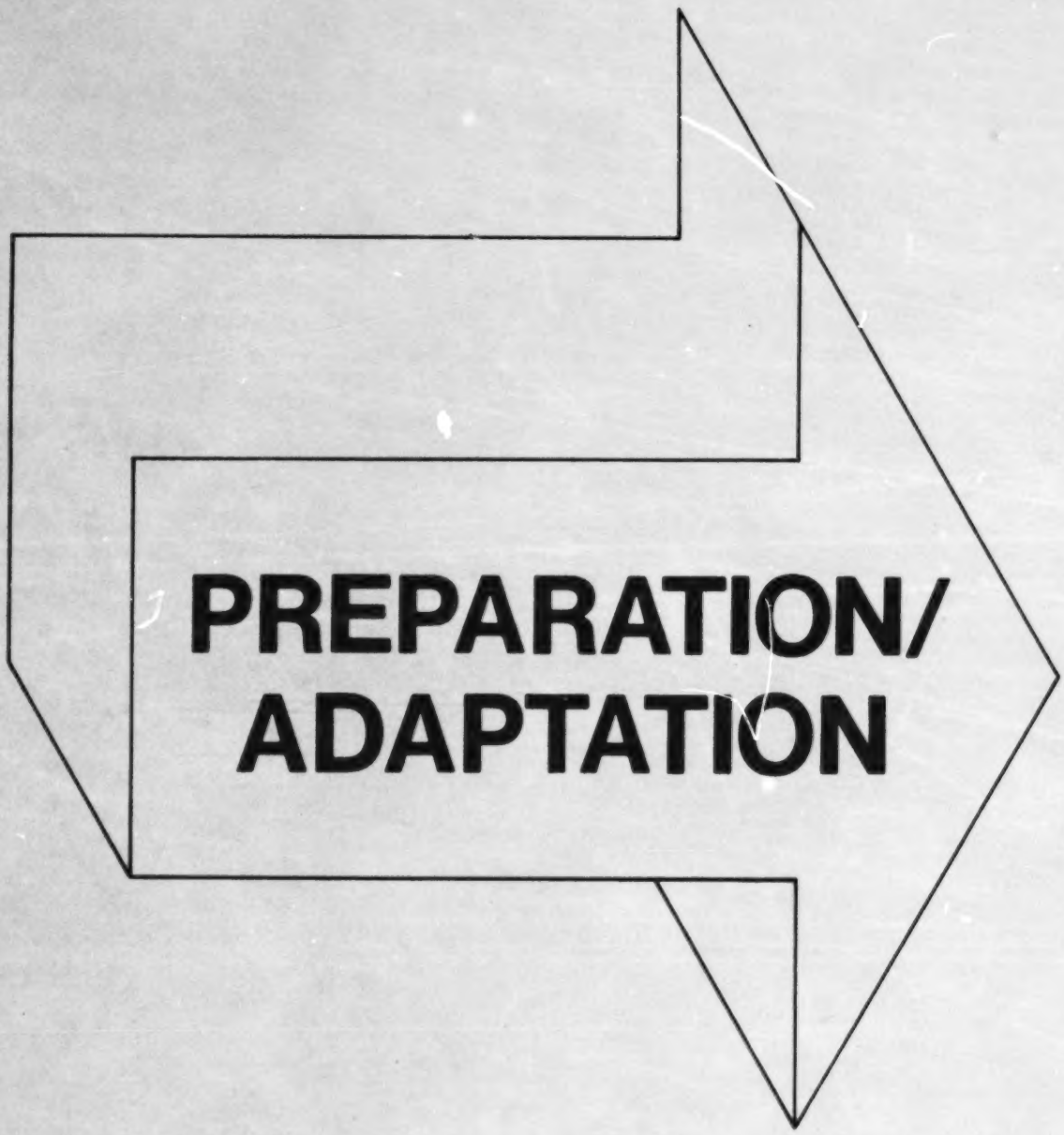
How well did you know the information needed to do the activities?

( ) Very well

( ) Fairly well

( ) A little

Be honest with yourself. If you feel you don't know the material well enough, it might be helpful to review this section before going on.


PREPARATION/
ADAPTATION

PREASSESSMENT

Here are some questions that test for knowledge of the contents of this level. If you are very familiar with the information needed to answer them, perhaps you should go to another level or unit — check with your instructor. Otherwise, jot down your answers. After you've read through this level, take the postassessment at the end of the "Preparation/Adaptation Activities" section and measure what you've learned.

1. Based upon the type of business you are interested in starting, complete the following chart by indicating whether or not your need the type of insurance listed. Why or why not?

   Your Business: (Be specific--e.g., a manufacturer of shoe polishes)

Type of Insurance	Will Need	Will Not Need	Reasons
1. Liability Insurance			
2. Social Insurance			
3. Property Insurance			
4. Business Life			
5. Fraud Insurance			
6. Fidelity Insurance			

2. What is the difference between a mortgage and a deed of trust? Which is more advantageous?
3. What are noninsurable risks?
4. What should a lease include before signing the lease agreement?
5. A business owner tells you, "It is never possible to have too much insurance." Do you agree or disagree? Why?

TEACHING/LEARNING OBJECTIVES

Upon completion of this level of instruction you should be able to:

1. Distinguish between a mortgage and a deed of trust.
2. Explain noninsurable risks.
3. Explain what is considered "adequate insurance coverage."
4. Explain fire and liability insurance.
5. Explain what a good lease agreement includes.

SUBSTANTIVE INFORMATION

IMPORTANCE OF LEGAL ISSUES

HOW IMPORTANT ARE LEGAL ISSUES?

Most businesses are involved in activities which have legal implications in their daily operations. If you decide to borrow money to buy new fixtures, buy a new piece of equipment, or sign a lease, you are performing business activities which have legal implications. Therefore, as an entrepreneur, you should be familiar with many different legal issues that affect your business. You should know enough about them to recognize when you need legal assistance.

Sources of Legal Issues

WHAT ARE SOME LEGAL ISSUES ENTREPRENEURS FACE?

Any business is continually faced with legal issues which range from obtaining patents for a product to paying on a mortgage. These issues should not be faced alone. It is neither possible nor wise for a business owner to attempt to solve them without professional assistance. Being at least familiar with areas requiring legal assistance might be helpful. The SBA publication, Managing for Profits, identifies the following sources of legal issues:

- Acquisitions
- Advertising-copy packaging
- Agents and brokers
- Antitrust matters
- Arbitration - role in disputes
- Bankruptcy
- Board of Directors
- Brand names
- Buying and selling - terms and conditions
- Checks - forgeries, frauds
- Contracts and agreements
- Competitors stealing employees
- Corporate form
- Employer and employee responsibilities
- Employment agreements
- Franchises
- Government - federal, state and local
- Insurance contracts
- Interstate transportation
- Inventions
- Labeling
- Licenses
- Mergers
- Misrepresentation

Multiple corporations	Product liability	Tie-in sales
Negligence	Profit sharing	Trade secrets
Negotiable instruments	Records, legal	Trademarks
Order acknowledgement and confirmation	Retirement pensions	Unfair competition
Patents	Slander and libel	Verbal agreements
Permits	Stock options	Wills
Price discrimination	Stock voting rights	Workers compensation
	Stockholders	Zoning
	Taxes	

(Managing for Profits, 1968, p. 165)

AGREEMENTS AND CONTRACTS

ARE THERE ANY DIFFERENCES BETWEEN BUSINESS AGREEMENTS AND CONTRACTS?

All business transactions result from agreements. Most of these transactions are such ordinary and common occurrences that entrepreneurs fail to recognize that they might be legal and binding contracts.

The term "agreement" has a wider and more comprehensive meaning than contract. Every time you make a purchase, buy a theatre ticket, or fly an airplane, an agreement is made. Each party to the agreement receives certain rights and assumes certain obligations. However, while all contracts are agreements, all agreements are not contracts. Whenever two or more persons are in complete accord, there is an agreement; however, this does not necessarily imply a contract.

A contract is a mutual agreement made between two or more persons which is valid and enforceable by law. If an agreement meets all the legal requirements of a contract, it is legally binding upon all parties. These legal requirements include that the contract must, among other things, be for a lawful purpose, and this purpose must be achieved in a lawful manner. Contracts

made concerning things prohibited by law such as gambling, or contracts contrary to public policy are illegal. Therefore, if one of the parties to the contract fails to assume his or her contractual responsibilities, the law allows the other party or parties to recover damages because of a breach of contract.

Special Contracts

Mortgages vs. Deeds of Trust

WHAT'S THE DIFFERENCE BETWEEN A MORTGAGE AND A DEED OF TRUST?

If an entrepreneur is considering borrowing money or buying on credit, there are a few legal issues that should be considered. For example, if an entrepreneur needs to borrow money and is using real property as collateral, a mortgage instead of a deed of trust should be secured. Unlike a mortgage, the holder of a trust (the one who loans the money) has the power to sell the property if payment is not made and the borrower has no right to get the property back.

Credit Sales Contracts

WHAT ARE CREDIT SALES CONTRACTS?

When you purchase goods on credit, your credit sales contract can be sold. A buyer can buy goods, sign a contract and send payments to the seller/creditor. Sometimes a seller/creditor transfers contractual rights to others. This means the seller/creditor sells the contract to another party for a small fee. This is called an assignment. Contract assignments are legal as long as they do not materially change the original contract price.

For example, Mr. Jones buys a refrigerator from E-Z Appliance. However, a month later, the firm decides it needs more cash to

take advantage of a sale and sells Mr. Jones' contract to the White Finance Company. There is no change in the amount due.

Mr. Jones is confused. How can he owe White Finance Company when he purchased the refrigerator from E-Z Appliance Store? E-Z Appliance has sold Mr. Jones' credit sales contract to White Finance Company. By law, Mr. Jones is obligated to pay White Finance Company.

Long-Term Sales Contracts

WHAT ABOUT LONG TERM SALES CONTRACTS?

Before signing a long-term sales contract, be sure to have it checked by your attorney. Such a contract could be financially disastrous to your firm if, for example, economic conditions were to change or competition were to develop new products.

In times of recession, some businesses have found themselves unable to fulfill a long-term sales contract profitably. Consider this situation. A small tortilla factory signs a long-term contract to deliver 1,255 dozen corn tortillas and 4,000 dozen flour tortillas every other week to a Mexican restaurant for 24 months at a set price. Shortly after the contract is signed, the community is faced with a major recession.

The biggest industry in the area is the petroleum industry. Gas and oil price increases directly affect the community's economy. The tortilla factory's costs begin to increase greatly. Utility bills climb rapidly; the cost of flour and other raw materials increases. In the twenty-four month period of the contract, the entrepreneur could face considerable losses because of the

predetermined price of the tortillas which could not be raised in accordance with inflation.

An attorney could have helped the tortilla factory entrepreneur by suggesting inclusion of a price renegotiation clause in the sales contract. This clause would require both parties (the factory and the restaurant) to renegotiate the price of tortillas every time the product costs increased or decreased by some specified amount, for example, 5%. The renegotiation clause could be backed up by another clause which would terminate the contract if the restaurant refused to renegotiate or delayed agreement unduly on a new price within a specified time, such as sixty days.

Lease Contract Requirements

WHAT SHOULD A LEASE INCLUDE?

Since a lease is a legal document, it is important that certain precautions be observed before the lease is signed. Examine the property thoroughly to make sure that it suits the purposes for which it is to be used. Make sure that the signatures are properly witnessed. Examine the lease thoroughly to make sure that it contains:

1. No narrow restrictions on merchandise that may be sold or on services that may be provided
2. Statements of the duration of the lease, the amount of rent, the date on which the rent is to be paid, and the penalty for late or non payment
3. Arrangements for subleasing, subletting and assignment to another merchant
4. Provisions in case of fire or other hazards
5. Mutual obligations concerning major and minor repairs
6. Options and renewal arrangements

(Wingate and Sampson, Retail Merchandising, 1975, p. 86)

Leasing of Equipment

WHY LEASE EQUIPMENT?

Often businesses lease more than the firm's premises. Even though leasing rates are usually higher than rates charged for purchasing the equipment on credit, many small firms lease equipment. Manufacturers very often lease machine tools and heavy equipment, including trucks. It is not uncommon to find service, wholesale, retail, and manufacturing firms leasing data processing equipment, photocopying equipment, and company cars.

Leasing has some very definite advantages. Leasing:

1. Does not tie-up capital.
2. Eliminates the need for insurance protection.
3. Saves taxes. Lease payments are tax-deductible.
4. Eliminates possession of outdated equipment, etc. When new models become available, most lease agreements allow the lessee to exchange the equipment for the new models.
5. Saves on maintenance costs since they are usually included in the terms of the lease.

INSURANCE

WHAT IS INSURANCE?

Being an entrepreneur requires taking risks -- you could be the loser. Insurance does not eliminate the risk, but simply transfers the cost of covering the loss from one person or business to a group of individuals or businesses.

Some risks are insurable; others are not. The possibility of losing the results of many years of hard work due to fire, theft, death, or accident exists. However, these types of risks can be covered by insurance. Noninsurable risks include change in business competition, bad weather and economic conditions. Some of these noninsurable risks can be minimized by using sound management practices. The story below is a good example of a noninsurable risk. The entrepreneur cannot cover the risk of fashion change with insurance, and must assume full responsibility.

Fickle feminine fashion has forced closure of a textile plant here which manufactured materials for panty girdles, now largely supplanted by the ubiquitous panty hose.

James F. Fleshman, manager of Fablok Mills of Virginia, Inc., said the plant's closing was simply a matter of changing styles and not enough demand for the product.

An industry spokesperson said miniskirts and panty hose have made panty girdles either obsolete or much shorter, with a result that much less of the stretch fabric is required.

In addition, it was pointed out, many wearers of panty girdles used them as a device for holding up conventional stockings as much as they did to control excess poundage on the anatomy. With the advent of panty hose, they said, the girdles were simply abandoned.

Fablok Mills began operation here only 14 months ago. Last week the company handed out final paychecks to its last 33 employees.

Fleshman said the parent company Fablok Mills, Inc., of Murray Hill, New Jersey, has no plans for reopening the Louisa, Virginia plant.
(Columbus Dispatch, April 5, 1970, p. 41)

Necessity of Insurance

WHY HAVE INSURANCE?

Some entrepreneurs view insurance as if it were a tax and an obligation, and a necessary but burdensome expense. This may be true of some types of insurance. It is important to distinguish which types of insurance are necessary and which are not. Determining the amount of coverage and other specific questions concerning all types of insurance should be discussed with your insurance agent.

Do you have the necessary and adequate insurance coverage for your business activities? Or are you assuming too much risk? Assessment One in the "Preparation/Adaptation Activities" section of this level is a very important checklist that will provide you with a better idea of your insurance needs.

Fire Insurance

WHAT ABOUT FIRE INSURANCE?

Fire insurance is one of the first and most common types of insurance that a business person thinks about. Do you know what your fire insurance covers and under what circumstances? For example, if your business has a fire and inventory is damaged due to smoke, does your policy cover the merchandise loss?

If a windstorm blows a tree onto your business property and tears down electrical wires in the process, creating sparks that become a fire, what happens? Is the loss covered? Many entrepreneurs have extended coverage endorsements. This type of coverage covers damage created by smoke, explosion, wind, hail storms, riots, aircraft, and vehicles. If vandalism, theft, and glass breakage occur as the result of the fire, is the business protected? All of these extended coverage endorsements add cost to the premium but ought to be considered and evaluated.

Liability Insurance

WHAT ABOUT LIABILITY INSURANCE?

An entrepreneur needs to consider the need for another common type of insurance, liability insurance. Liability insurance protects a business against claims arising from personal injury or property loss. Suppose a visitor to your plant, on a tour of the facility, trips over a small hand tool that has fallen on the floor and breaks a wrist. Perhaps you own a landscaping firm and one of your employees kills a customer's rose. Do you have insurance protection for these accidents?

If you are a drug manufacturer, or are considering becoming one, have you thought about what your responsibility is if someone takes your drug and develops a health disability? The law governing damages for goods-caused harm is commonly called product liability. When harm is caused by a defect in goods, damages

may be recovered on the basis of several theories, one of which is warranty. For example, an individual can sue a manufacturer for breach of warranty when he or she has suffered personal injury by the harmful condition of food, drugs, or beverages. However, the right to sue the manufacturer of a bottled or packaged food may be denied when there is evidence that another person has or might have tampered with the item before it reached the buyer or consumer.

Advice concerning the various types of fire or liability insurance should, as previously mentioned, be obtained from your insurance agent.

PREPARATION/ADAPTATION ACTIVITIES

Are you able to apply these legal principles to your business aspirations? Are you now knowledgeable about legal issues and small business? The following activities should help you check your knowledge.

ASSESSMENT ONE

Use the checklist below and assess your insurance needs. Do you now have the types of insurance listed? If you don't, do you think you will need any or all of them?

	Need Information	Have	Not Needed	
1.	☐	☐	☐	PROPERTY INSURANCE- This insurance may protect against fire, theft, windstorm, loss of shipment, marine insurance, plate glass insurance, automobile insurance, smoke explosion, vandalism. The question to ask your insurance representative is not - "What am I covered for", but "What am I NOT covered for?"

Notes to Yourself:

Need Information	Have	Not Needed	
2. ☐	☐	☐	LIABILITY INSURANCE - Coverage may include customer coverage for injury, personal inquiries of libel, slander, employee accident, or damage caused by company vehicle.

Notes to Yourself:

Need Information	Have	Not Needed	
3. ☐	☐	☐	BUSINESS LIFE INSURANCE - This coverage protects the business or the family of the business person from financial loss which could result from the death of the owner or key executive.

Notes to Yourself:

Need Information	Have	Not Needed	
4. ☐	☐	☐	SOCIAL INSURANCE - This insurance includes some mandatory government, as well as some optional insurance. Included in this category are unemployment compensation

Notes to Yourself:

insurance, worker's compensation insurance, old age, survivors, disability insurance, and group insurance.

	Need Information	Have	Not Needed	
5.				OTHER KINDS OF INSURANCE - Other types of insurance that you may wish to investigate, depending on your type of business:
a.	☐	☐	☐	Use and Occupancy Insurance - Includes coverage of loss of earnings in case of suspension of business due to fire, etc.
	Notes to Yourself:			
b.	☐	☐	☐	Fidelity Bond - Coverage includes protection against theft or embezzlement by an employee.
	Notes to Yourself:			
c.	☐	☐	☐	Fraud Insurance - Coverage includes protection against counterfeit money, bad checks, larceny, and some robberies.

Now that you have made this assessment you probably have a better notion about your business insurance needs. Does this checklist raise questions about your policy? If so, it would be wise to contact your insurance agent.

ASSESSMENT TWO

1. Make arrangements to visit a local bank or a savings and loan institution and interview the mortgage officer. Discuss the major points of a mortgage in your interview. Attempt to get information about current interest rates, types of mortgages available and the difference between mortgages and deeds of trusts.
2. Invite a panel of persons to discuss business insurance alternatives with your group. Include an insurance agent, entrepreneurs (try to include a manufacturer, wholesaler, and owner of a service firm), and a lending institution representative from a bank or savings and loan institution. Develop a set of questions to ask the panel which include the following:
    a. What types of insurance are available?
    b. What determines adequate protection?
    c. What types of insurance do lending institutions normally require?
    d. How much risk should an entrepreneur be willing to assume?

3. Visit a local store that sells major appliances, such as stoves, refrigerators, etc. Have they made arrangements for a finance company to provide credit to their customers? Ask the owners if the firm has ever been involved in assignments of contractual rights.

4. Explain fire and liability insurance in detail. Do you think these types of insurance have some special value for certain types of entrepreneurs?

5. Arrange to visit a small manfacturing firm in your community to discuss the firm's leasing policy with the owner/manager. Do they lease any of the equipment used in manufacturing the firm's products? Do they make lease agreements with their customers?

POSTASSESSMENT

1. Identify a type of business you are interested in starting. Complete the following chart. Indicate whether you need the type of insurance listed. Give your reasons for the decisions.

   Your Business (Be specific - e.g., a manufacturer of shoe polishes)

Type of Insurance	Will Need	Will Not Need	Reasons
1. Liability Insurance			
2. Social Insurance			
3. Property Insurance			
4. Business Life			
5. Fraud Insurance			
6. Fidelity Insurance			

2. Distinguish between a mortgage and a deed of trust. Are there any advantages of having one over the other?
3. What are noninsurable risks?
4. Before signing a lease agreement, what should you be sure the lease includes?
5. A business owner tells you, "It is never possible to have too much insurance." Do you agree or disagree? Why?

Compare your answers to your responses to the preassessment. You may want to check your postassessment answers with your instructor.

SELF-EVALUATION

How well did you know the information needed to do the ativities?

( ) Very well

( ) Fairly well

( ) A little

Be honest with yourself. If you feel you don't know the material well enough, it might be helpful to review this section before going on.

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SOURCES TO CONSULT
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RESEARCH AND DEVELOPMENT SERIES NO. 194 B-3

PACE

A Program for Acquiring Competence in Entrepreneurship

Instructor's Guide

Part II

Becoming An Entrepreneur

Unit C

Legal Issues and Small Business

THE NATIONAL CENTER
FOR RESEARCH IN VOCATIONAL EDUCATION
THE OHIO STATE UNIVERSITY
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USING THE INSTRUCTOR'S GUIDE

The Instructor's Guide contains the following:

- Teaching/Learning Objectives (identical to the Teaching/Learning Objectives found in the PACE unit)
- Teaching/Learning Delivery Suggestions
- Pre/postassessment Suggested Responses

This information is geared towards the three levels of learning, and is designed for use as a supplemental teaching aid. Additional instructions for using PACE, sources of information, and an annotated glossary can be found in the PACE Resource Guide.

PRE/POSTASSESSMENT
SUGGESTED RESPONSES

EXPOSURE

1. In an *expressee contract,* agreement conditions are communicated verbally in written or oral form. In an *implied contract,* these conditions are understood, though not openly expressed.

2. A contract that is enforceable by law must meet these requirements: (a) there must be an offer and an acceptance, (b) real consent on the part of both parties must be given, (c) all parties must be competent, (d) all considerations must be valid, and (e) a legal purpose must be involved.

3. Insurance considerations will vary. The type of business and degree of risk the respondent is willing to assume will determine the types of insurance to be considered.

4. Responses should reflect an understanding of the differences among the types of contracts.

5. *Insurance* is a contract whereby, for a stipulated consideration (premium), one party agrees to pay another for specified losses arising from a specified cause. The person who is reimbursed for a loss is the insured or the *insuree.* A *premium* is a periodic fee paid for insurance. A *policy* is a written contract for insurance.

EXPLORATION

1. A lease is a contractual agreement between a landlord and a tenant. Leases are distinguished by the length of tenancy they stipulate: tenancy for years, tenancy from month to month, period tenancy, and tenancy at will.

2. A mortgage is a written, conditional agreement in which one party pledges property to another party as security for a loan. Three characteristics of mortgages are (a) if the debt is not paid on schedule, the mortgagee has a right to recourse under prevailing state laws, (b) the mortgagor has a right to regain the property by paying what is due within a limited time after default, and (c) once the mortgage is paid in full and the mortgagee gets the cash plus interest, the mortgagor owns the property free and clear.

3. The Uniform Commercial Code is a detailed guide of the rules of business conduct. It contains detailed rules of conduct and appropriate methods of doing business.

4. Coinsurance is a clause which stipulates that the insurer and the insuree share the cost of a loss. It may or may not be included in the insurance agreement. Responses may vary, but should reflect knowledge of the fact that coinsurance costs must be partially paid by the business owner.

5. Types of insurance include the following: (a) *Fire insurance* policies can vary and in order to get full insurance coverage, more than one policy must be purchased, (b) *Casualty insurance* protects the business from burglary, robbery, theft, etc., (c) *Insurance against losses related to goods* deals with insurance coverage for goods in transit, (d) *Public liability insurance* is a type of casualty insurance which involves warranties, product liability, and consumer protection.

PREPARATION/ADAPTATION

1. Completed charts, particularly entries listed under "Reasons," should indicate a knowledge of the types of insurance available.

2. Both mortgages and deeds of trust are contracts in which one party pledges property to another party as collateral for a loan. However, entrepreneurs planning to borrow should probably secure a mortgage. If the entrepreneur were to secure a deed of trust, the holder of the deed (the one who loans the money) has the power to sell the property if payment is not made and the borrower has no right to get the property back.

3. Noninsurable risks are those possibilities of danger against which a business cannot protect itself. Non-insurable risks include change in business competition, bad weather, and economic conditions.

4. Before signing a lease, you should be sure it includes (a) no restrictions that would hinder your ability to operate the firm, (b) statement of duration of lease, (c) statement of rental fee and penalties for late or nonpayment, (d) provisions for fire or other hazards, (e) mutual obligations concerning major and minor repairs, and (e) options and renewal arrangements.

5. While insurance protection helps to minimize risk, it is possible to overprotect a business venture. The entrepreneur who carries too much insurance is not using the firm's capital resources most effectively.

LEVELS OF LEARNING	TEACHING/LEARNING OBJECTIVES Upon completion of this level of instruction you should be able to:	TEACHING/LEARNING DELIVERY SUGGESTIONS A variety of different teaching/learning methodologies have been used. To help you organize your work and plan the use of this level these suggestions are made:
Exposure	1. Distinguish between expressed and implied contracts. 2. Name the basic requirements that must be satisfied to make a contract enforceable by law. 3. Explain the need for insurance and describe the kinds of insurance a small business person should consider. 4. Define the terms "premium" and "policy." 5. Explain why credit sales constitute a type of contract.	1. Invite an insurance salesperson to meet with the group to discuss the types of business insurance available. 2. Arrange to have a local lawyer meet with the group regarding contracts.
Exploration	1. Name two types of leases. 2. Name the major rights and responsibilities of lessees and lessors. 3. Identify the common characteristics of mortgages. 4. Describe the Uniform Commercial Code. 5. Explain different types of insurance coverage available. 6. Describe coinsurance.	Obtain printed material on state laws and forms concerning sales contracts from the appropriate local government agency.
Preparation/Adaptation	1. Distinguish between a mortgage and a deed of trust. 2. Explain noninsurable risks. 3. Explain what is considered "adequate insurance coverage." 4. Explain fire and liability insurance. 5. Explain what a good lease agreement includes.	1. Make arrangements for a panel to discuss business insurance with the group. The panel should be composed of a manufacturer, a retailer, a wholesaler, an owner of a service firm, an insurance agent, and a lending institution representative. 2. Arrange for the mortgage officer of a bank or savings and loan company to meet with the group.

The PACE series consists of these parts and units.

PART I: GETTING READY TO BECOME AN ENTREPRENEUR

- Unit A: Nature of Small Business
- Unit B: Are You an Entrepreneur?
- Unit C: How to Succeed and How to Fail

PART II: BECOMING AN ENTREPRENEUR

- Unit A: Developing the Business Plan
- Unit B: Where to Locate the Business
- Unit C: Legal Issues and Small Business
- Unit D: Government Regulations and Small Business
- Unit E: Choosing the Type of Ownership
- Unit F: How to Finance the Business
- Unit G: Resources for Managerial Assistance

PART III: BEING AN ENTREPRENEUR

- Unit A: Managing the Business
- Unit B: Financial Management
- Unit C: Keeping the Business Records
- Unit D: Marketing Management
- Unit E: Successful Selling
- Unit F: Managing Human Resources
- Unit G: Community Relations
- Unit H: Business Protection

RESOURCE GUIDE